Gray's Cleaning Service *and* Service Employees International Union, Local 254, AFL–CIO, CLC. Case 1–CA–34701

June 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and amended charge filed by the Union on November 5, 1996, and January 9, 1997, the General Counsel of the National Labor Relations Board issued a complaint on March 6, 1997, against Gray's Cleaning Service, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On May 30, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On the same date the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 2, 1997, notified the Respondent that unless an answer was received by May 19, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Malden, Massachusetts, has been engaged in the business of window cleaning and carpet cleaning. During the 1996 calendar year, in conducting its business operations, the Respondent performed services valued in excess of $50,000 for employers which themselves are directly engaged in interstate commerce, including Rhode Island Hospital and Massachusetts Institute of Technology. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent engaged in the Window Cleaning Industry, excluding all executive, salaried supervisors, sales employees, clerical employees, guards, professional employees and all other supervisors as defined in the Act.

Since about April 7, 1995, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and, since that date, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement which was effective for the period April 7, 1995, through October 31, 1996 (the 1995–1996 agreement.) At all times since April 7, 1995, based on Section 9(a) of the Act, the Union has been, and is, the exclusive collective-bargaining representative of the unit.

Since about May 6 until about October 31, 1996, the Respondent has failed to continue in effect all the terms and conditions of the 1995–1996 agreement by failing to make contractually required payments to the health and welfare fund and the pension fund. About October 1996 the Respondent also failed to continue in effect all the terms and conditions of the 1995–1996 agreement by failing to remit to the Union the membership dues deducted by it from the wages of the unit employees. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

Since about November 1, 1996, and continuing to date, the Respondent has failed and refused to make contributions to the Union's health and welfare fund and pension fund and to remit to the Union the membership dues deducted by the Respondent from the wages of the unit employees. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity

to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the 1995–1996 agreement by failing to make contributions to the contractual health and welfare fund and the pension fund since about May 6, 1996, we shall order the Respondent to honor the terms of the 1995–1996 agreement that survive expiration until a new agreement or good-faith impasse, and to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union, since about October 1996, dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit to the Union any unremitted dues that were deducted from employees until the contract's expiration, with interest as prescribed in *New Horizons for the Retarded*, above.[2]

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[2] The 1995–1996 agreement, and thereby the duty of the Respondent to deduct union membership dues from employees' paychecks, expired on October 31, 1996. See *Sullivan Bros. Printers*, 317 NLRB 561, 566 fn. 15 (1995); and *R.E.C. Corp*., 296 NLRB 1293 fn. 3 (1989). Presumably no further deductions were made after that date. Deductions made after expiration of the contract must be returned to the employees. See *Peerless Roofing Co*., 247 NLRB 500, 506 fn. 17 (1980).

Chairman Gould concurs in the result reached by his colleagues. However, he expresses no view as to whether the dues check-off authorizations expired with the contract and will examine this issue in future cases.

ORDER

The National Labor Relations Board orders that the Respondent, Gray's Cleaning Service, Malden, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to recognize and bargain with Service Employees International Union, Local 254, AFL–CIO, CLC, as the exclusive collective-bargaining representative of the following unit employees by failing to continue in effect all the terms and conditions of the 1995–1996 agreement by unilaterally failing to make contractually required payments to the health and welfare fund and the pension fund or by failing to remit to the Union the membership dues deducted by it from the wages of the unit employees:

> All employees of the Respondent engaged in the Window Cleaning Industry, excluding all executive, salaried supervisors, sales employees, clerical employees, guards, professional employees and all other supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms and conditions of employment of the 1995–1996 agreement that survive expiration until a new agreement or good-faith impasse is reached, and make the unit employees whole for any loss of benefits or expenses ensuing from its failure to make all contractually required contributions to the health and welfare and the pension funds since May 6, 1996, in the manner set forth in the remedy section of this decision.

(b) Remit to the Union, with interest, any unremitted dues that were deducted from the pay of unit employees until the expiration of the 1995–1996 agreement, pursuant to valid dues-checkoff authorizations.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Malden, Massachusetts, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 5, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 30, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to recognize and bargain with Service Employees International Union, Local 254, AFL–CIO, CLC, as the exclusive collective-bargaining representative of the following unit employees by failing to continue in effect all the terms and conditions of the 1995–1996 agreement by unilaterally failing to make contractually required payments to the health and welfare fund and the pension fund or by failing to remit to the Union the membership dues deducted by it from the wages of the unit employees:

> All employees of the Employer engaged in the Window Cleaning Industry, excluding all executive, salaried supervisors, sales employees, clerical employees, guards, professional employees and all other supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms and conditions of employment of the 1995–1996 agreement that survive expiration until a new agreement or good-faith impasse is reached, and WE WILL make the unit employees whole for any loss of benefits or expenses ensuing from our failure to make all contractually required contributions to the health and welfare and the pension funds since May 6, 1996, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL remit to the Union, with interest, any unremitted dues that were deducted from the pay of unit employees until the expiration of the 1995–1996 agreement, pursuant to valid dues-checkoff authorizations.

GRAY'S CLEANING SERVICE